Professional Liability



OVERVIEW

For busy professionals, liability issues are an unfortunate reality, whether or not well-founded. Obtaining wise and timely advice from experienced counsel may head off potential claims. When necessary, an effective defense can be of paramount importance and a matter of personal pride. The choice of legal representation is a critical first step in protecting and restoring one's reputation.

Attorneys, doctors, hospitals, nurses, nursing homes and long-term care providers, psychologists, and other medical, healthcare, and dental providers, professionals in real estate, accounting, engineering, insurance, brokerage and other fields rely on the firm's legal representation when malpractice claims arise. The firm provides advice at every possible stage in malpractice liability from the time a conflict is proactively recognized. Where possible, our lawyers work to resolve claims before they are filed as lawsuits or licensing or disciplinary proceedings. When claims or charges have been filed, firm lawyers will vigorously defend (and less frequently pursue) claims of professional liability.

Whether professional clients seek individual counsel, or representation through insurance arrangements (such as errors and omissions or other coverage), or assistance with professional licensing proceedings, review panels, arbitrations, or court proceedings, firm lawyers will provide effective and empathetic counsel to individuals, professional service entities and providers.

EXPERIENCE

Legal Professionals

When lawyers or law firms are seeking legal counsel, we are privileged to be called upon to protect and defend our peers throughout New Mexico. The professional affiliations of legal clients range from large national law firms to small firms and sole practitioners licensed to practice law in New Mexico.

Working as "lawyers' lawyers" requires the ability to effectively address and defend issues arising from the underlying subject matter of our clients' work, which varies considerably. The firm has experience advising lawyers and firms regarding conflicts at every stage, evaluating potential claims, and often defending disciplinary claims and allegations, either in tandem with liability claims, or independently.

Physicians, Physician Assistants and Hospitals

Hospitals, hospital administrators, physicians and other medical professionals rely on lawyers at Modrall Sperling when faced with suits alleging direct vicarious malpractice liability. The firm has experience in a variety of malpractice actions as well as actions involving hospital administration issues. The firm has handled medical malpractice claims in proceedings before the

©2026 Modrall Sperling, All Rights Reserved

New Mexico Medical Review Committee and in New Mexico state courts, and additionally has worked with a variety of local and national experts in regard to this defense work.

Long-Term Care Facilities and Professionals

Long term care facilities include nursing homes, continuing care communities, rehabilitation care facilities, assisted living, independent living facilities and other care models. They are closely regulated under a variety of federal and state laws and regulations. They are also frequently the target of liability claims and lawsuits. Long term care clients experience unique challenges which require assistance from lawyers with specific knowledge and experience. Modrall Sperling has a long and active history providing effective representation of long-term care facilities and their employees in these various regulatory and litigation contexts.

When long term care or individual clients need legal assistance in wrongful death and other injury cases, the firm will vigorously defend them. Our clients also rely on the firm to avoid or resolve potential liability claims short of litigation. Modrall Sperling has a successful record in this arena. In litigated liability matters, the firm's objective is to prevail at the earliest stage possible.

- Obtained summary judgment in favor of a nursing home in a case seeking damages for wrongful death of a nursing home patient. Plaintiffs claimed that the nursing home was negligent in not implementing certain fall prevention measures and that the absence of those measures caused Decedent's death. The federal court found the Plaintiff had failed to obtain necessary expert medical testimony to establish that the Decedent's death was caused by the alleged negligence of the Defendant and entered judgment in the defense's favor. Plaintiffs appealed the trial court's ruling to the Tenth Circuit Court of Appeals. After oral argument, the Tenth Circuit affirmed the ruling of the trial court. See *Holley v. Evangelical Lutheran Good Samaritan Society,* 588 Fed. Appx. 792 (10th Cir. 2014).

The firm has considerable experience in litigating the enforcement of arbitration clauses in agreements between long term care providers and patients.

- Won reversal on appeal of order denying motion to compel arbitration of nursing home liability action. See *Barron v. Evangelical Lutheran Good Samaritan Society*, 2011-NMCA-094, 265 P.3d 720.

- Successfully obtained a ruling recognizing parties' rights to choose a forum by contract prior to becoming involved in litigation. The plaintiff alleged that our client acted negligently in providing care for a resident at the client's assisted living facility. The son of the resident signed an arbitration agreement that required the arbitration of any dispute. Despite the existence of the arbitration agreement, son filed suit in state court. The client filed a motion to compel arbitration and plaintiff argued that the arbitration agreement was unenforceable. After briefing and oral argument, the Court found that the arbitration agreement was enforceable. The precedent that this case sets should be helpful in seeking to enforce similar agreements in New Mexico state courts.

Additionally, long term care clients seek advice in non-litigation matters. The firm has successfully defended long term care administrators and executives in response to professional licensing inquiries or complaints. We have prevailed in establishing the tax- exempt status of non-profit providers informally, at the trial court level and on appeal.

- Successfully represented a large continuing care facility in Albuquerque in a tax protest matter. In 2010, the County Assessor sent La Vida Llena a Notice of Valuation greater than $22 Million which would have resulted in a property tax liability of over $300,000 per year. The firm filed a protest against the imposition of any tax, and the Assessor and County Valuation Protests Board denied the claim of exemption. The firm appealed to the District Court, which found that the exemption applied. The Assessor, sought review from the Court of Appeals, which affirmed the District Court in a decision issued on February 19, 2013. As a result of the successful protest, the client saved over six hundred thousand dollars in taxes for the years 2010 and 2011.

©2026 Modrall Sperling, All Rights Reserved

Pharmacy Professionals

When pharmacies and pharmacy professionals are faced with claims of liability, Modrall Sperling has demonstrated success in defense of such claims including adverse drug events and dispensing errors. The firm also has an established track record in representing individual pharmacists in proceedings before the New Mexico Board of Pharmacy.

- Successfully obtained a defense verdict in a wrongful death trial brought against one of the nation's largest retail pharmacy chains alleging its pharmacists had improperly filled excessive levels of prescriptions for pain medications. While acknowledging their professional obligations, the pharmacists successfully defended by establishing that they are not doctors, do not have access to patient charts, are not tasked with policing the medical profession, and do not make independent treating decisions before dispensing prescriptions.
- Counsel to national pharmacy chains in personal injury and death cases alleging pharmacist negligence in filling prescriptions that are alleged to have been contraindicated for the consumer.
- Multiple cases on behalf of national pharmacy chains against personal injury lawsuits alleging dispensing errors resulting in personal injury/death.
- Represent licensees (pharmacist; retail pharmacy) in disciplinary proceedings before the New Mexico Board of Pharmacy.

Other Professionals

When dentists, accountants, nurses, appraisers, architects, engineers and a variety of professionals need assistance in New Mexico licensing proceedings, or to manage and resolve actual and potential liability claims, they contact the firm for representation.

Other Resources

- Legal Malpractice State of New Mexico –Legal Malpractice State of New Mexico, *50 State Survey of Legal Malpractice Law* published by American Bar Association, New Mexico chapter written by Timothy C. Holm, Kenneth L. Harrigan and Charles A. Armgardt, 2012.

KEY CONTACT

Jennifer A. Noya
505.848.1881
jennifer.noya@modrall.com

Timothy L. Fields
505.848.1841
timothy.fields@modrall.com

RELATED ATTORNEYS

Jennifer G. Anderson

Abby Bannon-Schneebeck

Sonya R. Burke

Timothy L. Fields

Mia K. Lardy

Tiffany L. Roach Martin

Lauren R. Martinez

Susan E. Miller

©2026 Modrall Sperling, All Rights Reserved

Shannon N. Nairn
Brian K. Nichols
Damon M. Nieto
Jennifer A. Noya
Emma K. Palmer
Benjamin C. Rossi

RELATED INDUSTRIES

Healthcare / Senior Care Facilities

©2026 Modrall Sperling, All Rights Reserved